

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:10cr57
v.	)	
	)	Hon. Raymond A. Jackson
MAXAMAD CALI SACIID, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' JOINT MOTION TO DISMISS THE INDICTMENT  
BECAUSE OF DESTRUCTION/SPOILIATION OF EVIDENCE**

Defendants Maxamad Cali Saciid, Mohammed Abdi Jamah, Jaamac Ciidle, Abdicasiis Cabaase, Abdirasaq Abshir and Mahamed Farraah Hassan, by counsel, and pursuant to Rule 12(b)(2) of the Federal Rules of Criminal Procedure, hereby move this Honorable Court to dismiss the Indictment in the above-styled case on the grounds of destruction/spoliation of evidence that has impaired defendants' ability to put on a meaningful defense. The Indictment alleges that on or about April 10, 2010, the defendant's committed the crime of piracy (and alleged related offenses) against the USS Ashland in the Gulf of Aden. The USS Ashland crew destroyed the skiff in which the defendants were found. Pursuant to Rule 12(b)(2), this Court should dismiss the Indictment.

**BACKGROUND**

According to the government's version of events, on or about April 10, 2010, the defendants were passengers on a small boat near the USS Ashland in the Gulf of Aden. The government maintains that someone on the small boat fired a weapon at the USS Ashland, and the Ashland responded by firing on the small boat, destroying it. According to discovery documents received from the government, one report states: "The small vessel was subsequently [after photos were taken] destroyed and sunk by V/USS ASHLAND."

## ARGUMENT

Both the Fifth and the Sixth Amendments guarantee an accused “a meaningful opportunity to present a complete defense.” *United States v. Scheffer*, 523 U.S. 303, 329 (1998). Where crucial evidence is destroyed, defendant cannot present a complete defense to the charges against him. Spoliation has been defined as the willful destruction of evidence or the failure to preserve potential evidence for another’s use in pending or future litigation. Essentially, under the spoliation of evidence doctrine, the general rule is “bad faith destruction of [evidence] relevant to proof of an issue at trial gives rise to an inference that production of the [evidence] would have been unfavorable to the party responsible for its destruction.” *See Aramburu v. Boeing Co.*, 112 F.3d 1398, 1407 (10th Cir. 1997). A finding of bad faith by the party destroying the evidence is necessary to apply an adverse inference. *Id.* (citations omitted).

*Arizona v. Youngblood*, 488 U.S. 51 (1988) and *California v. Trombetta*, 467 U.S. 479 (1984) govern cases in which the government no longer possess the disputed evidence. *United States v. Femia*, 9 F.3d 990, 993 (1st Cir. 1993). This standard, culled from *Trombetta*, 467 U.S. at 488-89, and *Youngblood*, 488 U.S. at 58, establishes three hurdles. The defendant must show that, in failing to preserve the evidence, the government, (1) acted in bad faith when it destroyed the evidence, which (2) possessed an apparent exculpatory value and which (3) is to some extent irreplaceable. *See Femia*, 9 F.3d at 993-94; *United States v. Ossai*, 485 F.3d 25 (1st Cir. 2007). The defendant bears the burden of proof on all three elements. *United States v. Marshall*, 109 F.3d 94, 98 (1st Cir. 1997).

Defendants submit that the Indictment should be dismissed because:

(1) **The crew acted in bad faith.** The crew of the USS Ashland acted in bad faith in destroying the skiff. Instead of totally destroying and sinking the skiff, it should have been preserved

by the crew, whether or not they gave any thought at that time to possible future litigation. The photographs taken by the crew before the skiff was totally destroyed do not present a true picture of what was aboard the skiff, because the initial 25mm rounds fired upon the skiff by the USS Ashland set the skiff on fire, causing the occupants to either be blown into the water, or they jumped into the water. There was no reason for the crew to destroy and sink this crucial piece of evidence.

(2) **The evidence possessed an apparent exculpatory value.** Unquestionably, the skiff possessed serious exculpatory value. The government maintains that the defendants were pirates, instead of smugglers. The defendants ability to defend themselves against these allegations has been hindered, because all possible exculpating evidence was destroyed when the crew sank the skiff and all of its contents. The destruction/spoliation of this evidence gives rise to an inference that production of the evidence would have been unfavorable to the government's allegations of piracy.

(3) **The evidence is fully irreplaceable.** Without question, there is no way that this evidence can be replaced, or comparable evidence obtained. The photographs taken after the skiff had burned for a period of time are also not comparable to the actual skiff and its contents.

### **CONCLUSION**

For the reasons set forth above, the defendants respectfully request this Court grant this motion to dismiss the Indictment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this 9th day of June, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

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